Anantram alias Nana vs. Guamanaram

SB Civil 1st Appeal No.127/1990

Date of Order: 29th March, 2007.

PRESENT

HON'BLE MR.JUSTICE BHAGWATI PRASAD

Mr.Jitendra Chopra for the appellant/s
Mr.D.D.Thanvi for the respondent/s.

This first appeal is filed by the appellant-defendant against the impugned judgment and decree dated 05.07.90 passed by the learned Addl.District Judge, Nagaur, arising out of Civil Original Suit No.24/1983 filed by the respondent- plaintiff.

The respondent plaintiff filed a civil suit for damages against the appellant-defendant alleging therein that on 24.07.1983 the defendant Anantram and his family members caused injury, by hitting with lathi, due to which he lost his left eye and on account of damages he filed the civil suit in which an amount of Rs.10,000/- was claimed towards damages. Rs.500/- for remaining admitted in the hospital and Rs.200/- for medical expenses. Thus a total amount of Rs.10,700/- was claimed towards compensation for damages ,

against the appellant- defendant.

The appellant-defendant filed written statement and denied the claim of the plaintiff and averred that the injury was not caused by him, rather he went to intervene in the quarrel between the plaintiff and his neighbour Hunman Prasad, who were fighting with each other. When the appellant- defendant went to intervene in this fight, a stick accidentally hit the eye of the plaintiff, due to which injury was caused to his eye. Thus, there was nothing intentional to cause injury to the plaintiff and in such circumstances, the defendant was not liable to pay the damages.

The learned trial court framed only two issues and thereafter recorded evidence on behalf of the parties. In support of his claim, plaintiff Gumnaram recorded his statement as PW/1 and also produced Shyamsunder as PW/2 , Hanuman as PW/3, Gopikishan as PW/4 and Shankerlal as PW/5, who were cross-examined by the defendant. Certain documentary evidence were also exhibited. The defendant Anantram also recorded his statement in defence as DW/1 and also produced Azimudin as DW/2, Bhanwarlal, as DW/3, Jethmal as DW/4 and Ghanshyam as DW/5, who were cross-examined by the plaintiff.

The learned trial court, after hearing both the parties, and after perusal of the material before it, came to the conclusion that the injury caused to the plaintiff was attributable to defendant and hence, holding the defendant-appellant liable for damages, awarded Rs.10,000/- towards damages and also awarded Rs.700/- towards medical expenses.

The defendant-appellant, aggrieved by the aforesaid order, filed the instant appeal and challenged the same on various grounds taking the plea that he was not the author of the injury to the plaintiff, rather he went to intervene in the quarrel, as such he was not liable to pay the damages.

This appeal was admitted on 17.10.1990 and, thereafter, on 19.04.91 a conditional stay order was passed that the appellant-defendant shall deposit Rs.2500/- against the awarded amount in the trial court which was duly complied by the appellant-defendant.

I have heard learned counsel for the parties and have given my thoughtful consideration.

It is undisputed fact that the respondent- plaintiff has lost his left eye which was caused during the fight which took place on 24.07.83 and in support of his claim he has produced certain witnesses, though who do not completely support the story of the plaintiff, that this injury was intentionally caused by the appellant-defendant.

The witnesses so produced by the plaintiff do not clearly say that the plaintiff was intentionally assaulted by the appellant-defendant and in this assault the plaintiff lost his eye. In this regard, complainant Hanuman Prasad had lodged FIR against appellant and his family members and filed charge sheet, but no one was finally convicted. So the decision given by the trial court on the FIR gives clean chit to the appellant- defendant that this injury was not caused by him to the plaintiff. The counsel for the respondent-plaintiff is not in a position to rebut this argument of the appellant.

The injury caused to the plaintiff causing damage to his left eye can not be so held that the defendant was conscious of his act of damage to the eye. Nonetheless the damage has occurred and it is with the blow of defendant . Thus some damage is liable to be awarded.

An amount of Rs.2,500/- was already deposited by the appellant-defendant at the time of grant of stay order and that amount had already been paid to the plaintiff so it would be just to make that amount to be the award for the act of the defendant.

Thus, in the interest of justice, I deem it proper to allow the plaintiff to retain the amount of Rs.2,500/- which had already been paid to him and for the rest of the amount the appeal filed by the appellant deserves to be allowed and is allowed partly, however, with no costs.

With the aforesaid findings, this appeal stands partly allowed and the judgment and decree dated 05.07.90 is modified to that extent.

(**BHAGWATI PRASAD), J.**

L.George